

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

July 15, 2009

William M. Chasanov, Esquire  
Brady, Chasanov & Schaeffer  
6 North Railroad Avenue  
Georgetown, DE 19947

**RE: Herman L. Ross, Jr.**  
**Defendant ID No. 9807006015**  
**Modification of Sentence**

Dear Mr. Chasanov:

You have filed a Motion for Modification of Sentence for Mr. Ross as to the 15-year mandatory sentence he received in 1999 for trafficking in drugs.

You report that you have pursued a commutation petition before the Board of Pardons, but the Board directed you to seek a modification in this Court.

In reviewing your Motion, I have tried to determine what has occurred. This is the best I can do.

In early July, 1999, your client pled guilty to trafficking in cocaine and the mandatory 15 years was imposed. The weapons offenses (also mandatory) were dropped. He was represented by Joe Hurley, Esquire.

His record at that time was a prior assault in the second degree and a delivery charge, both within six (6) years of the trafficking charge.

The mandatory sentences for drug offenses were subsequently reduced by the legislature. A mechanism was put in place for everyone in your client's circumstance to be reviewed by a panel, which included a Superior Court Judge. The panel was to determine whether a recommendation would be made to the sentencing judge to reduce the mandatory sentence in light of the legislative reduction of sentence.

In other words, there was no entitlement to a reduction, and the panel was essentially a “parole board”, but with all the players at the table, including a Superior Court judge. Anthony Rendina at the Department of Correction reviewed this matter for me as he was involved in the decision-making. The Department of Correction did not keep a record file for those persons who did not get a favorable recommendation, but he was able to figure out that Mr. Ross had been reviewed twice and denied twice. Of concern would have been the gun charges, his prior drug conviction, and that he had not yet then completed eight (8) years, i.e., the new minimum mandatory.

At the present time, the State is opposed to your request because they do not want to open up the floodgates for people in similar circumstances. I do not think this is a legitimate concern. First, the panel’s function was put in place to require all modifications to go through the review process. Inmates and their lawyers could not make a direct request to the Court for modification because of the “floodgate” concerns. This was done so an orderly review could take place. This was done many years ago, and one must assume all of the cases have been reviewed.

Returning to your present Motion, it must be denied. Absent extraordinary circumstances (Superior Court Criminal Rule 35), this Court has long lost jurisdiction. While you argue the changes in the statute create extraordinary circumstances, that is not the case because the review panel was put in place to deal with this issue. Having been denied twice by the review panel, I will not now overrule their decision to find extraordinary circumstances.

Since he is now three years past the eight years mandatory per the new statute, I would think he would have a good shot at a favorable outcome upon a third internal review. I am copying this letter to Judge Carpenter as he is now Superior Court’s representative as to these reviews. This decision is not intended to “pass the buck” but to direct you to the right door.

The Motion for Modification of Sentence is denied.

**IT IS SO ORDERED.**

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj

cc: Prothonotary  
Chancellor William B. Chandler, III  
The Honorable William C. Carpenter, Jr.  
Anthony Rendina, DOC  
Martin J. Cosgrove, Jr.